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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120417412-2412-01]

RIN 0648-XC510

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Gulf of Mexico Reef Fish Fishery; 2013 Accountability Measure  
for Gulf of Mexico Commercial Gray Triggerfish

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; accountability measures.

SUMMARY: NMFS implements an accountability measure (AM) for  
commercial gray triggerfish in the Gulf of Mexico (Gulf) reef  
fish fishery for the 2013 fishing year through this temporary  
final rule. This temporary rule reduces the Gulf gray  
triggerfish 2013 commercial annual catch target (ACT) (equal to  
the commercial quota) to 51,602 lb (23,406 kg), based on the  
2012 commercial annual catch limit (ACL) overage. This action  
is necessary to reduce overfishing of the gray triggerfish  
resource in the Gulf of Mexico.

DATES: This rule is effective [insert date of publication in  
the Federal Register], through December 31, 2013.

ADDRESSES: Electronic copies of the final rule for Amendment 30A, the temporary rule and associated environmental assessment (EA) for gray triggerfish interim measures, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727-824-5305, or e-mail: [Rich.Malinowski@noaa.gov](mailto:Rich.Malinowski@noaa.gov).

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf (FMP). The FMP was prepared by the Gulf Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

#### Background

The reauthorization of the Magnuson-Stevens Act implemented new requirements that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. Accountability measures are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act

mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP. In part, Amendment 30A established commercial ACLs, commercial quotas (which were set lower than the ACLs to account for management uncertainty) and commercial AMS that would go into effect if the commercial quotas for gray triggerfish are reached or the ACLs are exceeded. In accordance with regulations at 50 CFR 622.49(a)(2)(i), when the applicable quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the sector for the remainder of the fishing year. If despite such closure, landings exceed the ACL, the AA will reduce the quota the year following an overage by the amount of the ACL overage of the prior fishing year.

The Council requested and NMFS implemented a temporary rule to, in part, reduce the gray triggerfish commercial ACLs and ACTs (equal to the commercial quotas) (77 FR 28308, May 14, 2012). The gray triggerfish commercial sector AMS state that, in accordance with regulations at 50 CFR 622.49(a)(17)(i), when the applicable commercial ACT (commercial quota) is reached, or

projected to be reached, the AA will file a notification with the Office of the Federal Register to close the sector for the remainder of the fishing year. If despite such closure, landings exceed the ACL, the AA will reduce the commercial ACT (commercial quota) the year following an overage by the amount of the ACL overage of the prior fishing year. These interim measures were extended through May 15, 2013, to allow for the development and implementation of permanent measures through Amendment 37 to the FMP (77 FR 67303, November 9, 2012).

#### Management Measures Contained in this Temporary Rule

In 2012, the commercial sector for gray triggerfish exceeded the 64,100 lb (28,845 kg) commercial ACL by 9,298 lb (4,218 kg). Therefore, NMFS reduces the 2013 commercial ACT (commercial quota) for gray triggerfish through this temporary rule. The 2013 commercial ACT is set at 51,602 lb (23,406 kg).

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf gray triggerfish component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

An EA was prepared for the interim measures contained in the May 14, 2012, final temporary rule (77 FR 28308). The EA analyzed the impacts of reduced gray triggerfish harvest through the 2012 fishing year, including the impacts related to the interim rule extension (77 FR 28308, November 12, 2012). Copies of the EA are available from NMFS (see ADDRESSES).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs (established by Amendment 30A), and the commercial ACT and commercial ACL (implemented by the temporary rule for interim measures), all located at 50 CFR 622.49(a), authorize the AA to file a notification with the Office of the Federal Register to reduce the commercial ACT (commercial quota) the following fishing year if a commercial ACL overage occurs. The final rule for Amendment 30A and the temporary rule for interim measures were already subject to notice and comment. Therefore, all that remains is to notify the public of the reduced 2013 commercial ACT (commercial quota) for Gulf gray triggerfish.

Additionally, prior notice and opportunity for public comment would be contrary to the public interest. Given the ability of the commercial sector to rapidly harvest fishery resources, there is a need to immediately implement the reduced commercial ACT (commercial quota) for the 2013 fishing year. Taking time to provide prior notice and opportunity for public comment creates a higher likelihood of the reduced commercial ACT (commercial quota) and the commercial ACL being exceeded.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 et seq.

Dated: February 28, 2013.

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Kara Meckley,  
Acting Deputy Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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